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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[27 January 1999]

GE.99-11142 (E)

The situation of human rights in Northern Ireland

1. In April 1998 the Good Friday Agreement was signed, providing a framework for establishing peace and enabling the return to a normal society in Northern Ireland. The Agreement places a premium on human rights, establishing a Human Rights Commission, an Independent Commission on Policing for Northern Ireland and a Criminal Justice System Review. In addition, the Good Friday Agreement calls for the removal of emergency powers: "The British Government will make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat and with a published overall strategy, dealing with: ... (iii) the removal of emergency powers in Northern Ireland." 1/

2. Nevertheless, in the wake of the Omagh bombing of August 1998, the British Government has introduced additional emergency measures that further erode the right to silence and give greater probative force to statements of police officers. 2/ Furthermore, in a recently published Consultation Paper on Legislation Against Terrorism, the British Government has indicated its belief that "the time has come to put that [counter-terrorist] legislation onto a permanent footing." 3/

3. As the Lawyers Committee has noted in the past, emergency powers in Northern Ireland have been linked to serious human rights violations. The Lawyers Committee believes that the maintenance of emergency legislation inevitably will continue to create conditions leading to such violations. Effective safeguards at pre-trial and trial stages help to prevent circumstances of torture and other cruel treatment. Such due process rights continue to be abrogated under the current emergency legislation regime in Northern Ireland. 4/

4. Following its latest examination of the United Kingdom, the United Nations Committee against Torture concluded, inter alia, that the continuation of the state of emergency in Northern Ireland amounted to a factor impeding the application of the provisions of the Convention against Torture, "noting that no exceptional circumstances can ever provide a justification for failure to comply with the Convention." 5/ In addition, the Committee against Torture recommended that the following steps be taken:

(a) The closure of detention centres, particularly Castlereagh, at the earliest opportunity;

(b) The abolition of the use of plastic bullet rounds as a means of riot control;

(c) Reconstruction of the Royal Ulster Constabulary (RUC) so that it more closely represents the cultural realities of Northern Ireland. This should continue to include an extensive programme of re-education for members of the RUC directed towards the objectives of the Peace Accord and the best methods of modern police practices. 6/

5. The Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, published an extensive report on Northern Ireland in April 1998 (E/CN.4/1998/39/Add.4). The Report found that the RUC persists in the intimidation and harassment of defence lawyers in Northern Ireland; that detainees are systematically denied access to counsel; and that the United Kingdom Government's failure to uphold the right to silence and the right to trial by jury resulted in miscarriages of justice and a lack of confidence in the justice system on the part of a large segment of society in Northern Ireland. To address these problems Mr. Cumaraswamy recommended the reinstatement of safeguards, which are currently restricted by the emergency powers. These included:

(a) The provision of immediate access to legal advice in all cases, including during police interviews;

(b) The introduction of video- and audio-recording of police interviews;

(c) Restoration of the right to remain silent under police questioning and an end to the judicial practice of drawing negative inferences from a defendant's decision not to testify;

(d) Abolition of the permissive standard for admitting at trial confession evidence procured by psychological pressure, deprivation, or other non-violent forms of coercion;

(e) Restoration of the right to trial by jury.

6. In addition, the Special Rapporteur recommended that the United Kingdom launch an independent inquiry into the circumstances surrounding the murder of defence lawyer Patrick Finucane in Northern Ireland 10 years ago. Finucane was murdered in his home, under circumstances that suggest that elements of the security forces colluded in the killing. The United Kingdom Government has thus far refused to open a public inquiry into the case, stating that the matter lacks a sufficient degree of urgent public importance. The Lawyers Committee supports the Special Rapporteur's recommendation and calls for a full independent inquiry to be undertaken. The Lawyers Committee urges the Commission members to do likewise.

7. The Northern Ireland Human Rights Commission has a general task under the Agreement of advising the Government with respect to rights legislation. In addition, it has the specific role of advising on the scope of defining rights supplementary to those in the European Convention on Human Rights, to constitute a Bill of Rights for Northern Ireland. The Northern Ireland Bill, which establishes the Human Rights Commission as called for in the Agreement, grants limited power to the Commission to bring court proceedings or provide assistance to individuals doing so. Parliament undertook to cooperate with the Human Rights Commission in investigations. However the Government refused to give the Commission powers to compel witnesses and discover documents. Both of these powers are envisaged by the United Nations minimum standards for

human rights commissions (the Paris Principles). 7/ The Government is currently advertising for membership of the new Human Rights Commission. The Lawyers Committee urges the Government to appoint members with a strong track record on human rights.

Notes

1/ "The Good Friday Agreement", April 1998, section Security, paragraph 3.

2/ Criminal Justice (Terrorism and Conspiracy) Act 1998.

3/ Legislation Against Terrorism - A consultation paper (December 1998), Cm 4178, Introduction, paragraph 4.

4/ See: Human Rights and Legal Defense in Northern Ireland: The Intimidation of Defense Lawyers. The Murder of Patrick Finucane (Lawyers Committee for Human Rights, New York, 1993), pp. 17-18 and 62 ff., and At the Crossroads: Human Rights and the Northern Ireland Peace Process (Lawyers Committee for Human Rights, New York, 1996), pp. 3-56 for detailed comment on emergency provisions in Northern Ireland. In maintaining the state of emergency in Northern Ireland, the United Kingdom Government continues to derogate from article 9 (3) of the International Covenant on Civil and Political Rights and article 5 (3) of the European Convention on Human Rights.

5/ See CRC/C/SR.360.

6/ Ibid.

7/ Principles relating to the status of national institutions for the promotion and protection of human rights. General Assembly resolution 48/134, annex. Methods of operation (b) ("Within the framework of its operation, the national institution shall: ... Hear any person and obtain information and any documents necessary for assessing situations falling within its competence").